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No. 1944

Supreme Court, U.S.
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# In the Supreme Court of the United States

October Term, 1970

ROBERT MICHAEL WOOSLEY, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
*Solicitor General,*
*Department of Justice,*
*Washington, D.C. 20530.*

# In the Supreme Court of the United States

OCTOBER TERM, 1970

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No. 1711

ROBERT MICHAEL WOOSLEY, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

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1. Petitioner, a Jehovah's Witness who had been denied a ministerial (IV–D) exemption and placed in Class I–A by his local board, was indicted for knowingly refusing to submit to induction into the armed services, in violation of 50 U.S.C. App. 462(a). With court-appointed counsel present, he pleaded not guilty; he subsequently filed a motion to dismiss, which the court denied.

Thereafter petitioner moved to withdraw his plea of not guilty and to plead guilty. Following careful questioning by the court (Pet. App. 4–5), his guilty plea was accepted, but his sentencing was deferred.



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On the day set for sentencing, petitioner made an oral motion to withdraw his plea of guilty. The court initially denied the motion but, following argument by counsel, authorized petitioner to file a written motion to vacate the plea, together with a supporting brief. At the argument on the motion, petitioner contended essentially that, following the denial of his motion to dismiss, counsel had advised him to enter a plea of guilty; he had acted on that advice, he claimed, without fully understanding the nature of the charge against him, the legal defenses he could raise and the consequences of the plea. In response to questions by the court (Pet. App. 6–8), petitioner acknowledged that no threats or promises had been made to him, though his counsel had indicated that "there was a possible chance of maybe asking for a conscientious objector status"; that he had never claimed conscientious objector status before his local board and could not in conscience then assert such a claim; and that he had informed his counsel he could not perform "conscientious objector status work" unless specifically ordered to do so by the court. The court denied petitioner's motion.

The court of appeals affirmed (Pet. App. 1–8). It held that the trial court had complied fully with Rule 11, Fed. R. Crim. P., that it had properly granted a hearing on petitioner's motion to withdraw his guilty plea, that the record indicates the guilty plea was "made voluntarily with understanding of the nature of the charge and the consquences of the plea" and that petitioner "had not been 'misadvised by counsel'"

(Pet. App. 3). Consequently, the court ruled, the denial of petitioner's motion was not an abuse of discretion.

2. Petitioner suggests no basis for further review of that determination. It is well settled that "a defendant has no absolute right to withdraw a plea of guilty before sentence; * * * the burden is upon the defendant to establish grounds for withdrawal of his plea." *Pitt* v. *United States*, 378 F. 2d 608, 611 (C.A. 8); see also, *Bruce* v. *United States*, 379 F. 2d 113 (C.A.D.C.); *United States* v. *Fernandez*, 428 F. 2d 578 (C.A. 2); *United States* v. *Ptomey*, 366 F. 2d 759 (C.A. 3); *United States* v. *Ford*, 363 F. 2d 375 (C.A. 4); *Williams* v. *United States*, 192 F. 2d 39 (C.A. 5); *United States* v. *Wright*, 407 F. 2d 952 (C.A. 7); *Hoyt* v. *United States*, 252 F. 2d 460 (C.A. 10). Nothing that this Court said in *Kercheval* v. *United States*, 274 U.S. 220, on which petitioner places heavy reliance, suggests otherwise. Indeed, there it was explicitly recognized that withdrawal of a guilty plea is a "privilege" to be accorded to a defendant by "[t]he court in the exercise of its discretion" when the defendant has demonstrated to the court's satisfaction that it "seems fair and just" to do so (274 U.S. at 224).

Here, after a full hearing and careful questioning of petitioner, the trial court determined that the proper showing had not been made. As the court of appeals correctly pointed out (Pet. App. 3), on this record there is no basis for concluding that, in so holding, the trial court "abuse[d] its discretion or

commit[ted] error in denying defendant's request to withdraw his plea of guilty."

Contrary to petitioner's assertion, this is not a case like *McCarthy* v. *United States*, 394 U.S. 459, where the trial court failed to address the defendant personally and explore the voluntariness of his plea and his understanding of the nature of the charge and the consequences of his plea. Nor is this case like *Gearhart* v. *United States*, 272 F. 2d 499 (C.A.D.C.), where the trial court's failure to hold a hearing on the motion for leave to withdraw a plea of guilty—such as was held in the instant proceedings—was declared defective.

Petitioner's reliance on *Kadwell* v. *United States*, 315 F. 2d 667 (C.A. 9), is similarly misplaced. There, court-appointed counsel had but a few minutes to glance at the indictment to learn of the charges against his client, and to advise his client of the consequences of a guilty plea. Upon learning of a possible meritorious defense to the charges, a motion to withdraw the client's plea of guilty was made, but denied. The court of appeals reversed on the ground that the defendant was deprived of a realistic opportunity to be apprised fully of the nature of the charges and the consequences of pleading guilty. Here, however, petitioner had been advised by his counsel initially of a possible meritorious defense to the charges and had pleaded not guilty; he had also moved unsuccessfully to dismiss the indictment. Only later, after further consultation with counsel, did he voluntarily elect to

change his plea to guilty. That plea was accepted only after the court had complied with Rule 11, Fed. R. Crim. P.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

JUNE 1971.

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[1] *United States* v. *Stayton*, 408 F. 2d 559 (C.A. 3), and *United States* v. *Young*, 424 F. 2d 1276 (C.A. 3), also relied on by petitioner, are not apposite. In *Stayton*, the court of appeals reversed the denial of a motion to withdraw a guilty plea because the trial court—unlike the situation here—erroneous applied a post-sentencing standard ("manifest injustice") to the pre-sentence motion, rather than applying the appropriate standard of "fairness and justice." And see Rule 32(d), Fed. R. Crim. P. In *Young*, a similar denial was reversed on appeal because the trial court erroneously determined that it was without authority to overrule another judge of concurrent jurisdiction who in the first instance had accepted the plea of guilty. Here, of course, unlike *Young*, the same trial judge who accepted the initial guilty plea later denied the motion to withdraw it.

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